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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2023	.	
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The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Between lines 24 and 25

insert:

Section 1. Paragraph (p) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(p)1. As used in this paragraph, the term:

a. "Killing of a law enforcement officer who was acting in



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12 accordance with his or her official duties” means all acts or
13 events that cause or otherwise relate to the death of a law
14 enforcement officer who was acting in accordance with his or her
15 official duties, including any related acts or events
16 immediately preceding or subsequent to the acts or events that
17 were the proximate cause of death.

18 b. “Killing of a victim of mass violence” means events that
19 depict either a victim being killed or the body of a victim
20 killed in an incident in which three or more persons, not
21 including the perpetrator, are killed by the perpetrator of an
22 intentional act of violence.

23 c. “Killing of a minor” means all acts or events that cause
24 or otherwise relate to the death of a victim who has not yet
25 reached the age of eighteen years at the time of the death,
26 including any related acts or events immediately preceding or
27 subsequent to the acts or events that were the proximate cause
28 of the death of a victim under the age of eighteen, events that
29 depict a victim under the age of eighteen being killed, or
30 events that depict the body of a victim under the age of
31 eighteen who has been killed.

32 2. A photograph or video or audio recording that depicts or
33 records the killing of a law enforcement officer who was acting
34 in accordance with his or her official duties, ~~or~~ the killing of
35 a victim of mass violence, or the killing of a minor is
36 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
37 of the State Constitution, except that a surviving spouse of the
38 decedent may view and copy any such photograph or video



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39 recording or listen to or copy any such audio recording. If
40 there is no surviving spouse, the surviving parents shall have
41 access to such records. If there is no surviving spouse or
42 parent, the adult children shall have access to such records.
43 Nothing in this paragraph precludes a surviving spouse, parent,
44 or adult child of the victim from sharing or publicly releasing
45 such photograph or video or audio recording.

46 3.a. The deceased's surviving relative, with whom authority
47 rests to obtain such records, may designate in writing an agent
48 to obtain such records.

49 b. A local governmental entity, or a state or federal
50 agency, in furtherance of its official duties, pursuant to a
51 written request, may view or copy a photograph or video
52 recording or may listen to or copy an audio recording of the
53 killing of a law enforcement officer who was acting in
54 accordance with his or her official duties, ~~or~~ the killing of a
55 victim of mass violence, or the killing of a minor, and, unless
56 otherwise required in the performance of its duties, the
57 identity of the deceased shall remain confidential and exempt.

58 c. The custodian of the record, or his or her designee, may
59 not permit any other person to view or copy such photograph or
60 video recording or listen to or copy such audio recording
61 without a court order.

62 4.a. The court, upon a showing of good cause, may issue an
63 order authorizing any person to view or copy a photograph or
64 video recording that depicts or records the killing of a law
65 enforcement officer who was acting in accordance with his or her



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66 official duties, ~~or~~ the killing of a victim of mass violence, or
67 the killing of a minor, or to listen to or copy an audio
68 recording that depicts or records the killing of a law
69 enforcement officer who was acting in accordance with his or her
70 official duties, ~~or~~ the killing of a victim of mass violence, or
71 the killing of a minor, and may prescribe any restrictions or
72 stipulations that the court deems appropriate.

73 b. In determining good cause, the court shall consider:

74 (I) Whether such disclosure is necessary for the public
75 evaluation of governmental performance;

76 (II) The seriousness of the intrusion into the family's
77 right to privacy and whether such disclosure is the least
78 intrusive means available; and

79 (III) The availability of similar information in other
80 public records, regardless of form.

81 c. In all cases, the viewing, copying, listening to, or
82 other handling of a photograph or video or audio recording that
83 depicts or records the killing of a law enforcement officer who
84 was acting in accordance with his or her official duties, ~~or~~ the
85 killing of a victim of mass violence, or the killing of a minor
86 must be under the direct supervision of the custodian of the
87 record or his or her designee.

88 5. A surviving spouse shall be given reasonable notice of a
89 petition filed with the court to view or copy a photograph or
90 video recording that depicts or records the killing of a law
91 enforcement officer who was acting in accordance with his or her
92 official duties, ~~or~~ the killing of a victim of mass violence, or



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93 the killing of a minor, or to listen to or copy any such audio
94 recording, a copy of such petition, and reasonable notice of the
95 opportunity to be present and heard at any hearing on the
96 matter. If there is no surviving spouse, such notice must be
97 given to the parents of the deceased and, if the deceased has no
98 surviving parent, to the adult children of the deceased.

99 6.a. Any custodian of a photograph or video or audio
100 recording that depicts or records the killing of a law
101 enforcement officer who was acting in accordance with his or her
102 official duties, ~~or~~ the killing of a victim of mass violence, or
103 the killing of a minor who willfully and knowingly violates this
104 paragraph commits a felony of the third degree, punishable as
105 provided in s. 775.082, s. 775.083, or s. 775.084.

106 b. Any person who willfully and knowingly violates a court
107 order issued pursuant to this paragraph commits a felony of the
108 third degree, punishable as provided in s. 775.082, s. 775.083,
109 or s. 775.084.

110 c. A criminal or administrative proceeding is exempt from
111 this paragraph but, unless otherwise exempted, is subject to all
112 other provisions of chapter 119; however, this paragraph does
113 not prohibit a court in a criminal or administrative proceeding
114 upon good cause shown from restricting or otherwise controlling
115 the disclosure of a killing, crime scene, or similar photograph
116 or video or audio recording in the manner prescribed in this
117 paragraph.

118 7. The exemption in this paragraph shall be given
119 retroactive application and shall apply to all photographs or



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120 video or audio recordings that depict or record the killing of a
121 law enforcement officer who was acting in accordance with his or
122 her official duties, ~~or~~ the killing of a victim of mass
123 violence, or the killing of a minor, regardless of whether the
124 killing of the person occurred before, on, or after May 23,
125 2019. However, nothing in this paragraph is intended to, nor may
126 be construed to, overturn or abrogate or alter any existing
127 orders duly entered into by any court of this state, as of the
128 effective date of this act, which restrict or limit access to
129 any photographs or video or audio recordings that depict or
130 record the killing of a law enforcement officer who was acting
131 in accordance with his or her official duties, ~~or~~ the killing of
132 a victim of mass violence, or the killing of a minor.

133 8. This paragraph applies only to such photographs and
134 video and audio recordings held by an agency.

135 9.a. This paragraph is subject to the Open Government
136 Sunset Review Act in accordance with s. 119.15 and shall stand
137 repealed on October 2, 2024, unless reviewed and saved from
138 repeal through reenactment by the Legislature.

139 b. The expansion of the public records exemption in
140 subparagraph (p)2. to allow for the expunction of a photograph
141 or video or audio recording that depicts or records the killing
142 of a minor is subject to the Open Government Sunset Review Act
143 in accordance with s. 119.15 and shall stand repealed on October
144 2, 2028, unless reviewed and saved from repeal through
145 reenactment by the Legislature. If the expansion of the
146 exemption is not saved from repeal, this paragraph shall revert



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147 to that in existence on June 30, 2023, except that any
148 amendments to this subsection other than by this act shall be
149 preserved and continue to operate to the extent that such
150 amendments are not dependent upon the portions of this
151 subsection which expire pursuant to this paragraph.

152 Section 2. (1) (a) The Legislature finds that it is a public
153 necessity that photographs and video and audio recordings that
154 depict or record the killing of a minor be made confidential and
155 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
156 Article I of the State Constitution. The Legislature finds that
157 photographs and video and audio recordings that depict or record
158 the killing of a minor render a graphic and often disturbing
159 visual or aural representation of the deceased. Such photographs
160 and video and audio recordings provide a view of the deceased in
161 the final moments of life, in which they are often bruised,
162 bloodied, broken, baring bullet wounds or other wounds,
163 lacerated, dismembered, or decapitated. As such, photographs and
164 video and audio recordings that depict or record the killing of
165 a minor are highly sensitive representations of the deceased
166 which, if heard, viewed, copied, or publicized, could result in
167 trauma, sorrow, humiliation, or emotional injury to the
168 immediate family of the deceased and detract from the memory of
169 the deceased. The Legislature recognizes that the existence of
170 the Internet and the proliferation of personal computers and
171 cellular telephones throughout the world encourages and promotes
172 the wide dissemination of such photographs and video and audio
173 recordings 24 hours a day and that widespread unauthorized



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174 dissemination of such photographs and video and audio recordings
175 would subject the immediate family of the deceased to continuous
176 injury.

177 (b) In addition to the emotional and mental injury that
178 these photographs and video and audio recordings may cause
179 family members, the Legislature is also concerned that
180 dissemination of photographs and video and audio recordings that
181 depict or record the killing of a minor is harmful to the
182 public. The Legislature is concerned that the release of these
183 photographs and video and audio recordings may educe violent
184 acts by persons who have a mental illness or who are morally
185 corrupt.

186 (c) The Legislature further recognizes that other types of
187 information, such as crime scene reports, continue to be
188 available which are less intrusive and injurious to the
189 immediate family of the deceased and continue to provide for
190 public oversight. The Legislature further finds that the
191 exemption provided in this act should be given retroactive
192 application because it is remedial in nature.

193 ===== T I T L E A M E N D M E N T =====

194 And the title is amended as follows:

195 Delete line 2

196 and insert:

197 An act relating to public records; amending s.
198 119.071, F.S.; defining the term "killing of a minor";
199 expanding an existing exemption from public records
200 requirements for a photograph or a video or audio



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201 recording held by an agency which depicts or records
202 the killing of a law enforcement officer or killing of
203 a victim of mass violence to include a photograph or a
204 video or audio recording held by an agency which
205 depicts or records the killing of a minor; clarifying
206 that a surviving spouse, parent, or adult child of the
207 victim is not precluded from publicly releasing such
208 photograph or video or audio recording; providing
209 criminal penalties; providing retroactive
210 applicability; providing for future legislative review
211 and repeal of the exemption; conforming provisions to
212 changes made by the act; providing a statement of
213 public necessity; providing a short